

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:08cv367**

HIGH VOLTAGE BEVERAGES, LLC,)	
)	
Plaintiff,)	
)	
Vs.)	ORDER
)	
THE COCA-COLA COMPANY,)	
)	
Defendant and Counter)	
Claimant,)	
)	
Vs.)	
)	
BRAND NAME MANAGEMENT, INC.;)	
and OWEN RYAN,)	
)	
Counter Defendants.)	
)	

THIS MATTER is before the court on plaintiff's Motion for Leave to Take Additional Discovery (#215). Such motion was heard on August 18, 2010. At the hearing, counsel for plaintiff explained the purpose of the motion:

But where we are is we don't know, we don't understand whether or not Coke has additional information in its possession that bears on the champerty counterclaim, and so what we've sought to do is we drafted a proposed discovery, and sought to draft it just as narrowly as possible just to nail that critical issue down, and, in fact, asked Coke in advance of filing our motion whether they could confirm that there was no additional information other than what HVB and the third parties were producing that would bear on the champerty counterclaim.

So HVB simply seeks confirmation that it won't be surprised at trial with additional evidence relating to that counterclaim, and that was the purpose for the motion.

(#229, at p. 36). Apparently, plaintiff seeks to serve two interrogatories and one request for production of documents. Defendant opposes this request, arguing that discovery has closed and Rule 26 obligates them to provide any supplementation.

The court does not believe that “confirmation that it won’t be surprised at trial” is good cause for allowing what is basically a reopening of the discovery process. Indeed, dispositive motions have been filed, and the mode of this case has shifted to trial preparation. The court believes that potential surprise is adequately covered by the continuing obligations under Rule 26 and that any attempt at surprise at trial will be dealt with by Judge Mullen.

ORDER

IT IS, THEREFORE, ORDERED that plaintiff’s Motion for Leave to Take Additional Discovery (#215) is **DENIED**.

Signed: September 22, 2010

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Dennis L. Howell
United States Magistrate Judge

